

**MINUTES OF LAYTON CITY
COUNCIL SPECIAL MEETING**

JULY 15, 2014; 6:35 P.M.

**MAYOR AND COUNCILMEMBERS
PRESENT:**

**MAYOR BOB STEVENSON, JOYCE BROWN,
TOM DAY, JORY FRANCIS AND JOY PETRO**

ABSENT:

SCOTT FREITAG

STAFF PRESENT:

**ALEX JENSEN, GARY CRANE, ED FRAZIER,
DAVE THOMAS AND THIEDA WELLMAN**

The meeting was held in the Layton High School Auditorium.

AGENDA:

FIBER OPTIC NETWORK UPDATE/MACQUARIE PROPOSAL DISCUSSION

Mayor Stevenson welcomed everyone. He said this meeting was to provide information, and the City wanted input. Mayor Stevenson introduced Councilmembers Brown, Day and Petro; Gary Crane, City Attorney; and Alex Jensen, City Manager. He indicated that some representatives with internet service providers (ISPs) were present.

Mayor Stevenson indicated that he probably couldn't answer every question, but the City would get back with the answers. He said the UTOPIA process began 12 years ago and he wasn't in favor of it in the beginning, and he felt that it was probably a mistake. Mayor Stevenson said there had been good intentions by good people but they didn't understand how complicated it would be. He said he would like to go through a presentation and then answer questions.

Mayor Stevenson gave a brief history of UTOPIA, which began in 2002. He explained the purpose of UTOPIA and he explained problems with the build out. Mayor Stevenson indicated that Layton City was approximately 12% built, with a 20% take rate. He explained "take rate."

A citizen asked what the original proposed take rate was that would have made UTOPIA a viable system.

Mayor Stevenson said he thought that it was around 30%.

Mayor Stevenson explained the issues with wireless and the future proof of fiber.

A citizen said he wanted some accountability for the bad mistake made by the City Administration.

A citizen expressed concerns with ongoing costs of keeping the system up to date.

Mayor Stevenson reviewed information on the UTOPIA and UIA bonds and the cost to citizens. He said Layton's share was 31 million dollars; with interest it would be 74 million dollars, or \$11.72 per household. Mayor Stevenson said Layton was currently paying about 2.6 million dollars a year, and was receiving nothing.

Mayor Stevenson explained the reason smaller, rural areas were built out, which was based on federal guidelines tied to some of the funding.

A citizen asked if the bonds could be refinanced to lower the interest rate.

Kurt Sudweeks, UTOPIA Financial Officer, explained why that wouldn't be a good financial decision.

Mayor Stevenson continued with the presentation and provided information about Macquarie. He indicated that Macquarie came to UTOPIA unsolicited.

Gary Crane explained how Macquarie came to UTOPIA.

A citizen asked if the Macquarie deal went through, would the \$12 go away; the citizens would still pay a \$20 fee.

Mayor Stevenson explained that the operating costs would go away, but the City would still have to pay their share of the original debt.

Mayor Stevenson continued to explain that the system would be an open access network, unlike the Google system in Provo. He said fiber would be run to every house.

A citizen asked who would run the system through the house.

David Bird, Sumo Fiber, said the ISPs would be responsible for running fiber through the house.

A citizen asked how they would be able to build out in 30 months with new developments coming on line every month.

Mayor Stevenson said fiber was being run in new subdivisions as part of the initial infrastructure.

A citizen stated that 5 cities had already opted out of the Macquarie deal, which would cause the fee to go up. She said the speeds were slower than what she was currently paying for.

Mayor Stevenson said the five cities that did not go forward still had their bond payments and costs to run the network.

Mayor Stevenson reviewed information about the Macquarie proposal, which included completion in 30 months with performance penalties. He explained the ISPs involvement in providing service and how money would come back to the City through up-selling. Mayor Stevenson reviewed disadvantages and advantages of the Macquarie proposal. He reviewed information about the cost of current telephone and internet services from incumbent providers. Mayor Stevenson reviewed census information about the use of internet and phones in the home in Utah. He reviewed potential citizen benefits.

A citizen asked about the internet speed that would be provided as part of the \$20 fee.

Mayor Stevenson said Macquarie was proposing 3 Mbs up and down, but the City felt that it should be a little higher.

Warren Woodward with XMission said currently on the UTOPIA network their speeds started at 100 Mbs per second and topped off at 1 gig. He said they currently charged \$35 a month for the 100 Mbs and \$64.95 a month for 1 gig. Mr. Woodward said they hadn't been given committed prices from Macquarie, but they intended to stay as close as possible to this pricing.

Mayor Stevenson asked how 5 Mbs on fiber would compare to Comcast's 15 on cable.

Mr. Woodward explained how an oversold node affected speed and why speeds were slower than what was sold. He said that problem would be eliminated on the UTOPIA fiber network.

A citizen asked what was wrong with UTOPIA currently and why wasn't it coming into the City; why did the City need this deal.

Mayor Stevenson said there was no money to fund additional building of infrastructure and there were a number of things that had happened to cause UTOPIA to come to a standstill. He said none of the cities wanted to bond for additional money to complete the network.

A citizen said there was a lot of fiber already in the ground. There was cable in the ground in his area but he couldn't use it.

Gary Crane said the most significant cost of the system was the last mile of fiber to the home; it wasn't economical for current providers to do that; that was what was left to build. Gary said the cities that had opted out of the proposal were the ones that were already built out or mostly built out. The last mile of fiber to the homes was very, very expensive.

A citizen said the Macquarie proposal was requiring a mandatory fee on every household to recoup their investment; he didn't want it and shouldn't have to pay for it.

A citizen asked why the cities weren't looking at proposals from other providers besides Macquarie.

Alex Jensen said Macquarie was not a service provider; they were an infrastructure builder, just like the City. He said Macquarie had no interest in providing end user services over the network. Alex said the construction of the network and the services that would be provided over the network were two completely separate things. He said the monthly fee that was being proposed would pay for the infrastructure to make the connection to the home. Alex said the homeowner would work individually with the service providers, and currently on the UTOPIA network there were approximately 16 service providers. He said the anticipation was that if service providers had access to this many houses over fiber, the number of service providers would increase substantially. Alex said this was the complete opposite of a proprietary, monopolistic system that was available now. He said Macquarie and the City would only be building infrastructure, they would not get involved with forcing residents to choose one service provider over another.

Alex said in 12 years, the Macquarie proposal was the most viable proposal UTOPIA had received. He said there had been a lot of tire kickers stating that they could do this or that, but when asked where their money was they had all went away. Alex said there was currently a Utah company, First Digital, that had expressed an interest. He said it was interesting that once the Macquarie proposal was put forth that others had become interested. Alex said there were a couple of options that were being reviewed. He said Macquarie was clearly superior in terms of their track record and in terms of its level of capitalization. Alex said Macquarie was an international company with over 100 billion dollars in assets being managed in the United States; this was a relative small project for them. He mentioned some of the projects in the United States that Macquarie was involved with.

A citizen asked why UTOPIA and UIA voted to not allow other proposals.

Alex said when Macquarie made their proposal, they spent a lot of money. He said they wanted the entities to sign a predevelopment agreement (PDA), which they did. Alex said the PDA laid out the terms of how the discussion would take place. He said Macquarie was not interested in sharing proprietary information with UTOPIA and UIA, and then having that be used against them in a different proposal. Alex said that was standard and fair practice in the telecom industry and every other private business venture. He said it was very common practice for governmental entities involved in economic development opportunities to keep that information private. Alex said at some point they had to stop talking about other ideas, about what might happen, and actually start analyzing what had been proposed. He said in the end, ideas were not solutions; the majority of the Board felt that they had to start vetting the proposal.

A citizen expressed that the citizens should not be paying for this; it should be done through the free market.

A citizen said he wanted this and might be the minority. He said there were a lot of people out there that wanted this, but they were not on the vocal side; what could they do to make sure they were heard. He said he loved the idea of an open infrastructure, which would give citizens a lot more choices than they currently had.

Mayor Stevenson reiterated that the purpose of the meetings was to get information to the citizens. He said this was the toughest issue facing the City. Mayor Stevenson said it must be understood that right now everybody was paying \$12 for nothing, and if nothing was done that amount would eventually be \$20. He said everyone in the room was paying money for this right now; the question was were there things the City could do to try and give the citizens something for their money.

A citizen said Layton had to deal with this. The proposal submitted by Macquarie looked like a great proposal. He didn't classify this as a needed infrastructure; there were private providers that were already providing the service. He said he was concerned whether ubiquitous was the answer; the citizens would be on the hook for something for 30 years. He urged the City to do further work. He asked if there was a cost associated with Milestone 2.

Mayor Stevenson said yes, there was a cost because Macquarie had a lot of cost involved in their proposal with various studies. He said the City would have to pay about \$100,000 at this point if the proposal didn't go through.

A citizen said he had had UTOPIA since 2009. He said when he first got UTOPIA it was 10 Mbs down and 2Mbs up, which he paid \$42 a month for. He said his bill last month for 100 Mbs down, which was way beyond what Comcast could ever deliver, was \$42 a month. He said that included XMission dropping their price because UTOPIA wanted more money to run on the network. He said the network never went down; when the power went out the network still worked. He said the idea that residents would be beholden to one company was foolish; if the fiber goes away there would be only one company, Comcast, that residents could go to for the internet. He said CenturyLink didn't count because they only provided 7Mbs, which was terrible. He said Comcast bills went up every year; in five years on the UTOPIA network his bill hasn't gone up once and he didn't have to sign a contract.

A citizen said she had had all three services; DSL, cable and UTOPIA. She said she was running a small business from her home and at her current location she could only get a DSL line; UTOPIA or cable was not available. She said it was impossible to run her small business on DSL; please do the deal and get UTOPIA to her location.

Mayor Stevenson said he would like everyone to think about what they would do to resolve this problem if they were on the Council; there were dollars being spent right now. He said he felt that this was a mistake in the beginning, but the City had to do something to resolve the issue.

A citizen said a 30% take rate was supposed to build out UTOPIA in the beginning; it appeared that the take rate was currently higher than that so why wasn't the network paying for itself now.

Gary Crane explained how the incumbents lobbied the legislature to stop marketing of networks and other issues with funding.

A citizen said she thought that the Macquarie proposal was a good way out of the situation; the citizens would get something for what they were already paying for.

Mayor Stevenson said the Council needed to make sure this was the best situation. The cities were

between a rock and a hard spot.

A citizen said this would affect a lot of homes in Layton. It should be on the ballot so that the citizens could decide.

Mayor Stevenson said that could be an option, but if that were the case, State law would not allow the City to promote their side of the issue and the incumbents would be able to spend all the money they wanted to oppose it.

A citizen suggested putting a flyer in the utility bill to see how many people wanted it.

A citizen said he read that UTOPIA was in a lawsuit with the Federal government for grants that it didn't receive. He suggested in the proposal back to Macquarie that that money be used to lower the fees or pay off the debt.

Gary Crane explained the RUS loan from the Federal government and how the government pulled the loan, and the impact that had on financing for the network.

Gary explained how having the Google network in Provo had caused the incumbents to lower their prices for service to stay competitive. He said similar services in Layton were much higher because there was no competition.

A citizen commented that he was not in favor of forcing every citizen to pay this fee; he paid less with his current provider.

A citizen said the issue was whether fiber was a good product. He referenced a movie, the Money Pit. He asked whether citizens should keep throwing good money after bad; the only people who could afford to do this were governments because they could dip into the citizens' pockets. He said the City should just pay the current debt.

A citizen asked if there was a representative from Macquarie in attendance.

Mayor Stevenson said no.

A citizen said Macquarie was currently in 3 lawsuits for price gouging. He suggested that the cities should require a performance bond. He asked why not consider some of the other proposals, and prepare a request for proposals from other companies such as Google, Comcast or CenturyLink.

Mayor Stevenson expressed appreciation to everyone for coming. He thanked the citizens for their comments and indicated that the Council was trying to resolve the problem.

The meeting adjourned at 9:06 p.m.

Thieda Wellman, City Recorder